

REMARKS

Reconsideration of the present application is respectfully requested. Claims 5 and 12 have been withdrawn from consideration by the Examiner as being drawn to a non-elected species. Claims 19-21 have been added, and claims 1, 8, 9, and 11 have been amended, so that claims 1-4 and 6-18 are presently pending with claims 1, 8, and 19 being independent.

Minor amendments to the specification have been made herein to correct a typographical error in the first sentence of paragraph [0018], as well as inserting a recently available serial number for an application incorporated by reference in the last sentence of paragraph [0025].

Applicant wishes to express its appreciation for the telephone interview conducted on August 25, 2003 with the undersigned in which a provisional election was made to prosecute the invention of species II, claims 6,7,13,14, and thank the Examiner for his time and consideration given during that interview. Applicant hereby affirms this election herein without traverse. Claims 1-4, 6-11, and 13-21 read on the elected species with claims 1-4, 8-11, and 15-18 being generic.

In the Office Action dated September 16, 2003, claims 1-3, 6, and 7 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,918,700 to Gregory (the "Gregory '700 patent"). Claims 6 and 7 were further rejected under 35 U.S.C. § 103(a) as being unpatentable over the Gregory '700 patent in view of U.S. Patent No. 5,823,292 to Krause (the "Krause '292 patent"). Claim 4 was rejected under 35 U.S.C. § 103(a) as being unpatentable over the Gregory '700 patent in view of U.S. Patent No. 6,223,856 to Schwoerer (the "Schwoerer '856 patent"). Claims 1, 8-11, and 18 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 1,841,676 to Roberts (the "Roberts '676 patent") in view of U.S. Patent No. 2,706,662 to Brown (the "Brown '662 patent"). Claims 2, 3, 15, and 16 were rejected under 35

U.S.C. § 103(a) as being unpatentable over the Roberts '676 patent in view of the Brown '662 patent and further in view of U.S. Patent No. 4,596,096 to Heath (the "Heath '096 patent"). Claims 8 and 13-15 were rejected under 35 U.S.C. § 103(a) as being unpatentable over French Patent No. 0014155 to Jean (the "Jean '155 patent") in view of the Brown '662 patent. Claim 16 was rejected under 35 U.S.C. § 103(a) as being unpatentable over the Jean '155 patent in view of the Brown '662 patent and further in view of the Heath '096 patent. Claim 17 was rejected under 35 U.S.C. § 103(a) as being unpatentable over the Jean '155 patent in view of the Brown '662 patent and the Heath '096 patent and further in view of the Schwoerer '856 patent. However, Applicant respectfully submits that none of the prior art references of record, when considered singly or in combination, teach or suggest the use of the structure recited in the claims.

Applicant was confronted with the problem of undesirable walkboard slippage along the supporting ledgers, such as when a worker steps onto one edge of the walkboard in scaffolding applications (specification at paragraph [0004]). Walkboard slippage is particularly problematic when using round-type ledgers in part because there is a smaller supporting surface and therefore frictional forces between the walkboard and the supporting surface is reduced. Additionally, walkboard slippage is also exacerbated by the desire to provide a walkboard that can be quickly and easily removed from the ledger, such as during disassembly or when moving the walkboard to another position on the scaffolding. None of the prior art has adequately solved this problem without compromising the quick removability of the walkboard.

The structure recited in independent claims 1 and 8 enables scaffolding that is easy to assemble, provides a positive nonslip coupling of a walkboard and the ledger that prevents inadvertent shifting of the walkboard along the ledger when pressure is applied to the walkboard,

even when using round ledgers, yet does not compromise the quick and easy removal of the walkboard from the ledger. In this regard, claim 1 has been amended to emphasize the arcuate configuration of the ledger's upper support surface. In addition, claims 1 and 8 have each been amended to emphasize the ability of the coupling between the walkboard and the ledger to generally prevent the walkboard from shifting along the ledger axis when the coupling element engages one of the abutment edges while enabling the walkboard to shift in at least one direction nonparallel to the ledger axis. The structure recited in new independent claim 19 enables scaffolding providing similar advantages to those detailed above, however, claim 19 recites, among other things, some features unique to walkboards having vertically projecting flanges that support the walkboard on the ledger so that the support surface extends beyond the ledger. None of the prior art references of record, when considered singly, or in combination, teach or suggest the use of the structure recited in any of these independent claims.

Turning now to the prior art, all of the prior art references of record teach a walkboard coupled to a ledger in such a manner that the walkboard is generally prevented from shifting in any direction nonparallel to the ledger axis when coupled thereto (see the Gregory '700 patent at FIG. 2; the Krause '292 patent at FIGS. 1 and 4; the Schwoerer '856 patent at FIG. 6 and col. 6, lines 57-61; the Roberts '676 patent at FIG. 3; the Brown '662 patent at FIG. 2; the Heath '096 patent at col. 6, lines 5-9; and the Jean '155 patent at FIG. 2). Accordingly, all of the prior art references of record, whether considered singly or in combination, are deficient at teaching or suggesting the use of the structure recited in amended independent claims 1 and 8. Additionally, none of the prior art references of record teach or suggest the use of a slot including a pair of recessed edges spaced below the upper surface of the ledger and being spaced on either side of the ledger axis, wherein the flange

of the walkboard is received in the slot so that the support surface presented by the walkboard extends beyond both sides of the ledger when the flange is received in the slot. Accordingly, all of the prior art references of record, whether considered singly or in combination, are deficient at teaching or suggesting the use of the structure recited in the new independent claim 19.

Applicant also submits that the motivation to combine the references in the manner proposed in the Action simply does not exist. In other words, if the mind is properly cast back to the time of invention, there is nothing to motivate one to combine the references in a manner to arrive at the claimed invention. *See, In re Dembiczak* 175 F.3d 994, 999-1000 (Fed. Cir. 1999). In this respect, it may be inferred that the proposed combination of the references amounts to improper hindsight. *Id; see also, In re Rouffet*, 47 USPQ2d 1453, 1458 (Fed. Cir. 1998). The use of hindsight is always forbidden. *Rouffet* at 1458; *M.P.E.P.* § 2142. The Action fails to identify any information in the references which would suggest their combination. Nor is there anything in the Action indicating where the motivation to combine the references may be found in the knowledge of one ordinarily skilled in the art or in the nature of the problem solved. Applicant further submits that such motivation outside the references does not exist. Therefore, the obviousness rejections are improper and should be withdrawn. However, as detailed above, even if the references are combined in the manner suggested in the Action, the proposed combination still falls short of the claimed invention.

Because the proposed combination of the references still fails to arrive at the claimed invention, a *prima facie* case of obviousness has not been established. *See M.P.E.P.* §§ 2142, 2143 and 2143.03. The references simply fail to teach or suggest the use of all the limitations of the claims. The obviousness rejections must consequently be withdrawn.

In view of the foregoing, Applicant submits that the amended independent claims 1 and 8, as well as the new independent claim 19, each recite structure not shown or suggested in the prior art references of record. Claims 2-4 and 6-7 depend directly or indirectly from claim 1, claims 9-11 and 13-18 depend directly or indirectly from claim 8, and claims 20-21 depend directly or indirectly from claim 19. These dependent claims recite additional features of the invention not shown or suggested by the prior art.

Therefore, the present application should now be in condition for allowance and such allowance is respectfully requested. Should the Examiner have any questions, please contact the undersigned at (800) 445-3460.

A check in the amount of \$9.00 accompanies this Amendment for the one (1) additional claim. The Commissioner is hereby authorized to charge any additional fees associated with this communication or credit any overpayment to Deposit Account No. 19-0522.

Respectfully submitted,

HOVEY WILLIAMS LLP

By:



Andrew G. Colombo, Reg. No. 40,565
2405 Grand Boulevard, Suite 400
Kansas City, Missouri 64108
(816) 474-9050

ATTORNEYS FOR APPLICANT

(Docket No. 33054)